

May 12, 2003

Kenneth Payne, Chief
Marketing Programs Branch
AMS Livestock and Seed Program
USDA STOP 0251
1400 Independence Avenue, SW
Washington, DC 20250-0251

Comments on: LS-02-15

Dear Sir,

The following comments are on behalf of the 15-member National Pork Board (Board), which was established by Congress in 1985 through passage of the Pork Promotion, Research, and Consumer Information Act. The Board is selected and appointed by the U.S. Secretary of Agriculture from nominees elected by approximately 170 producer and importer delegates (who are the Secretary's appointees also) from all 50 states. The Board is authorized to establish an orderly procedure for financing through assessments and to carry out effective and coordinated programs. Those programs are to be designed to a) strengthen the position of the pork industry in the market place and, 2) maintain, develop, and expand markets for pork and pork products.

We are very familiar with the assessment and collection system and provide these comments to enhance only the intended purpose of the proposed rule that is:

“ . . . to establish the total number of pork producers and importers that would be utilized in determining whether the 15 percent threshold requirement contained in the Act for conducting a referendum has been met.”

OVER ARCHING PRINCIPLE

The Pork Act requires that all producers of market hogs, feeder pigs and seedstock pay assessments based on marketings of these classes of animals. Importers of live hogs, feeder pigs, or seedstock also are required to pay, with assessments remitted through the U.S. Customs Service. Likewise, importers of pork and pork products. No exemption is in law or regulation for volume minimums or type. Therefore the Department must be thorough in searching for all producers and importers this proposed rule intends to identify. Past USDA rules and regulations have provided the opportunity to vote in referendum to any producer who has marketed at least one swine during a specific time period. This obviously implies that a thorough and comprehensive process should be put in place to determine the universe of producers. It will take extra care by USDA to search out and identify those who market only a few swine.

It is important that the proposed rule be consistent with the Act/legislation. In referring to Sec. 1623(b)(1)(A), the USDA should focus on the wording: “. . . who have been producers and importers during a representative period, . . .” The proposed rule tends to focus on producers who have paid the checkoff through a reporting system to the Board. The pork checkoff collection is not a perfect system where all producers in fact have paid the assessments due. The Act does not define the universe as just those pork producers who pay, but by several definitions in the regulations - - 1230.12, 1230.16 and 1230.21. No reference is made to only those who have paid, but rather to those “. . . who have been producers . . .”

NUMBER OF REMITTERS

The Board has determined that the following number of entities reported swine marketings for the period of December 2001 through November 2002:

Entities Reporting Market Hogs	2,802
Entities Reporting Feeder Pigs	1,102
Entities Reporting Seedstock	582

Some firms would be counted more than once in the numbers as they would report more than one class of swine. We would estimate that there would be somewhere between 3,200 and 3,600 individual entities that report to the Board. However, there are entities/groups that do not remit to the Board that would have producers' names. In these comments, we will point out examples of entities/groups that are responsible to pay assessments and have paid through unique marketing processes. The following sections explain how the proposed rule should be expanded or modified to better identify all producers and importers covered by the Pork Act.

TYPES OF REMITTERS

Following is a discussion of the types of remitters, with some recommendations to help AMS thoroughly identify producers who are being assessed checkoff or are responsible for paying checkoff.

Packer Reports: A large volume of assessments is reported by approximately 121 packer entities. All market swine eventually are harvested, but not necessarily through a major packer/processor (i.e., some may be custom processed). Requiring the packer to report its producer customers would provide some, but not all, names of producers who were responsible for paying the checkoff assessments. Therefore, AMS should more fully analyze this packer information and then seek additional names through secondary steps. Following are examples of customers in a packer's record who have paid assessments that are the responsibility of individual producers not in the packer's record.

- Agents/Dealer who work on a commission basis. These types of individuals/companies are in a packer's customer list. They, in turn, may represent numerous producers and collectively negotiate prices for a commission. The packer does not know the producer of the hogs – only the identity of the agent. The agent is then responsible for redistributing the proceeds of the sale to the individual producer, with merit or deductions, including checkoff, being the producer's financial responsibility. Common examples here would be marketing co-ops and production system groups, such as Pipestone, Hog Inc., and many others. USDA/AMS should identify these entities and include, by regulation, where these types of business structures must report the identity of producers. Some – but not all – of these type agents are registered with USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA).
- Youth (4H and FFA) Marketings. Frequently, marketings of individual youth projects are pooled and marketed through a packer. In this case, the packer would not make individual payments to youth, but would remit to, for example, a county fair sale group, which would then disburse the revenue less deductions (including checkoff assessments) to each individual. The fairs that remitted the checkoff directly to the Board in 2002 reported on approximately 58,000 head. The number of head marketed per youth in a sale like this might be one to three head. Therefore these sales might represent somewhere between 20,000 and 58,000 individuals who were assessed in a manner reported by the fair but not by the packer. In our estimation, these are two ways that youth-project remittance comes to the Board – 1) the remitter (fair) may have the name, 2) the remitter/packer name is not known.

National 2002 statistics from 4-H report 188,976 4-H youth were enrolled in swine projects. Nationally, FFA reports 49,889 (\pm 5,000) FFA members having swine projects. Some of these could be duplicative, but not a substantial number as only high school age youth could be eligible for both. These youth are subject to assessments on their marketings. A very high percentage of these projects would result in marketing of hogs. USDA/AMS's rule should ask/require the appropriate national group to provide the names of these youth for the database.

- Pooling of Marketings. Because of economic factors, producers are working together more frequently to pool and collectively market their animals in larger lot sizes. This is driven by economics as packers pay incentives (refer to USDA Market News reports) for larger/semi-truck size lots. To capitalize on this incentive, smaller producers frequently pool their hogs under one producer's name for marketing purposes and then that producer redistributes the proceeds, including the marketing deductions/fees (including checkoff), to the producers who contributed animals to the pooled marketings. Therefore, USDA/AMS's rules should address this by polling those names derived from the packer list as to whether other producers were represented in the marketing and responsible for checkoff.

Likewise, medium to small family operators also may pool the marketings of family members. Family relationships (e.g., husband/wife, parent/child, etc.) may exist in formal or informal agreements for ownership and marketing of animals. Therefore, by USDA/AMS's rule, names gathered from packer customer lists would need to be contacted in order to identify individuals to whom the marketing proceeds were divided. If necessary, this could be documented by either written agreement, a copy of IRS Form F that showed livestock revenue/expense, or other relevant information.

- Marketings involving contract production. Securing names of customers from packers may, in some cases, overlook producers involved in business arrangements that involve custom or contract finishing (excepting those that may use a marketing agent based on commission that should also be included). Arrangements between these type of producers are not public, but there may likely be arrangements where the custom or contract producer stands the responsibility for checkoff. With this being the case, USDA/AMS should include in its rule a process to seek and identify producers who have the financial responsibility of checkoff in this situation. Authority to pursue this should be included in the final rule.

MARKETS AND DEALERS

Based on the Board's reporting files, there are approximately 856 entities that the Board terms a market or dealer. Nearly all of the above packer issues and

points would apply to customer names from this group. In addition, as mentioned above, there could be dealers acting as agents and paid on commission fee that are not in the records of the Board or, for that matter, GIPSA. GIPSA, in the Board's opinion, has an incomplete listing of parties doing business in this matter. This is why it is important that a rule and procedures be developed to search deeper in both the packer and markets/dealers customer list.

SEEDSTOCK REPORTERS

There are approximately 236 entities classified by the Board as seedstock reporters. Any of the 236 reporting entities could have responsibility to remit the checkoff assessment on behalf of other producers for whom they may sell their seedstock through a collective marketing arrangement. Not all are individually in compliance with reporting to the Board. Following are examples where the proposed rule should be expanded to identify producers that have assessment responsibilities.

- Breeding Stock Companies. Significant volume of animals may be reported through this type of firm. However, the production and marketing styles of those companies are unique, and uniform business arrangements do not exist. A company could be totally owned and controlled with production/animals not changing ownership within the production scheme until final marketings. However, there are many significant instances where ownership changes through the growing phase and the company has taken responsibility to remit assessments from multiple producers' animals in different classifications of swine where sale occurs. These systems may involve independently owned "grandparent herds," "multiplier herds," nursery, and grower stages. The proposed rule does not sufficiently cover the responsibility of these remitters to identify other parties in their production scheme that are covered by the checkoff and may have the responsibility for paying checkoff. The rule should address these instances.
- Individual Breeders. We would expect, in this instance, that most breeders would be individuals. There are national breed registry associations that have a list of approximately 500 individual producer members who raise purebred seedstock. Membership is required to receive the service of issuing pedigrees. The Board would recommend that the rule require these names be submitted to USDA as producers covered by the pork checkoff.

However, there are two types of systems that can involve other individuals, through formal or informal relationships, who have the responsibility to pay checkoff even though another party makes the remittance.

- ❑ One type of production scheme would be an individual breeder who establishes a relationship with another producer(s) to raise or produce seedstock of a common genetic make-up, yet markets it under one farm/breeder name. The checkoff assessment from the sale proceeds would be the responsibility of the origin herd, yet the cooperators (origin herds) would not be identified.
- ❑ Another instance would be within a family. Again, the checkoff might be reported under a common farm/family name, but the stock/animals might be owned by different family members - - parents, siblings, children. The sales proceeds are attributed to the appropriate source (i.e., progeny of sows owned by a specific family member).

Without a more comprehensive rule or implementing process, the complete listing of seedstock producers operating in the above manner and responsible for checkoff would not be appropriately entered into the database as intended by this proposed rule.

- Fairs. There are approximately 728 entities that are classified by the Board as fairs that have a sale for individual owners/producers of swine. As addressed earlier, these events cover primarily sales of youth projects. Based on the statistics of swine youth projects in 4-H and FFA cited earlier, the majority of marketings of youth projects take place through systems that the Board's collection and remittance process does not cover, so different options should be pursued by regulations. Therefore, we would recommend that the rule be expanded to require that youth with swine projects be included in the database through the appropriate 4-H or FFA source. This would better accomplish the objective of determining the universe of producers responsible for Pork Checkoff. This suggestion would better address USDA/AMS's objective of identifying all producers because smaller volume transactions like this are the weakest area of the Board's compliance process. The names of minors could be kept confidential.

FEEDER PIGS

The Board has approximately 143 entities classified as feeder pig reporters/producers. The Board believes there is a significant number of producers in this category that does not comply with checkoff and remittance responsibility. Large-volume businesses are easiest to identify and monitor compliance. However, the small-lot and farm-to-farm sales are weak in complying with the responsibility of paying and/or remitting checkoff, yet involve a significant number of producers that should be identified. To the Board's knowledge, no public or private source list exists to identify these people. Other alternatives, such as seeking names from the 2002 Ag Census and obtaining state premise identification used in pseudorabies eradication

(which would lead to producer owners), would be appropriate and should be included in the rule to help identify producers.

- Unique reporting that needs to be accounted for. Like names generated from the sale of market hogs and other classes of swine, there are unique ways in which feeder pigs are reported. The rules should be expanded to seek out these business arrangements. Generally speaking, the Board can identify large-volume producers. However, large-volume producers are low in number compared to the small-volume producers. These producers may operate small herds for supplemental income, or their swine operation may complement a general diverse ag operation. Producers' business styles vary. The following would characterize operations that may or may not be in the records of remitter to the Board, but that need to be covered by the rules
 - ❑ A producer who has raised the pig and may or may not report/remit the funds to the Board. Compliance by producers is weak where volume is small, such as a pick-up truck load or even a sale of one to three animals to a youth for a project.
 - ❑ An individual or producer who may buy pigs and deduct the checkoff from the first owner.
 - ❑ An individual or company (e.g., partnerships and Limited Liability Corporations) that may take distributions of pigs or may sell their share of the production to others in the LLC or outside the group.
 - ❑ An individual and/or marketing group that combines pigs from producers of known health and genetic sources, remits assessments on behalf of the producers and, through accounting procedures, passes the revenue less marketing costs (including checkoff) back to the first producer.
 - ❑ Markets and dealers (recognized by GIPSA) involved with feeder pig trade.

ANNUAL REMITTERS

The Board has a list of 91 entities that have or may expect to remit assessments to the Board once a year. This type of remitter may report only a few dollars from events such as a consignment or production sale, or other such sales from which assessments may be from one or many producers. It may also be a report from a small family-farm entity where parents, siblings, spouse, and children are all involved in production, ownership, and the proceeds of the marketings. Out of convenience they would report as one entity, but again have individual ownership and checkoff responsibility. The USDA/AMS proposed rules and procedures need to be able to cover this small family-operation example. National Pork Board records do not identify all these types of operations. Other procedures to obtain these names may be appropriate (i.e., public notice in papers/magazines calling for individual submission and explanation of the business operation). Here again, the

USDA/NASS-conducted 2002 census information, animal disease premise identification, etc., could be a source of swine-production operations and the individual producer structure involved within that operation.

Besides family operations just covered, annual reports may also include consignment sales, breeder production sales, etc. These sales types are incomplete in the National Pork Board's records, so rules and procedures should be written to identify individuals/producers who were responsible for the checkoff. An example of a type of marketing not covered could be: Breeder A consigns animals to the annual State consignment sale. Because Breeder A has sold semen to Breeder B he selects some superior animals from Breeder B to sell under Breeder A's name for promotion and marketing purposes. The agreement, however, provides that all revenues and expenditures of the sale flow back to Breeder B. This would not be uncommon or inappropriate as both Breeder A and B would benefit. However, the rules would have to be expanded to cover this arrangement to identify Breeder B.

NICHE MARKETERS

As the producer's margin for raising swine has narrowed over the past several years, producers of all sizes have become involved in marketing pork more so than just selling swine. Examples of this operation are varied – from a Premium Standard Farms operation to individuals. Individual producers may be grouped together to capture further processed or niche markets (e.g., Niman Ranch, etc.). Or they may, as an individual, custom slaughter and market a relatively small volume niche product. More of these type operations are developing, and the proposed rule should address seeking out these types of operations that may not be in the Board's list of remitters through other sources. Obtaining a list of organic or other specialty producers may be useful to USDA to address this area.

IMPORTS OF SWINE AND PORK PRODUCTS

According to U.S. Customs (Customs), there are 585 physical locations in its system where imports (and related paperwork) can pass through. To explain the import collection system of live hogs and pork products, importers of these products hire brokers, for a commission fee, to process the paperwork and be responsible for paying assessments to Customs on the importer's behalf. According to Customs, the actual producer is not on its data record; the documentation is the broker's responsibility. Therefore, to ascertain the number of importing producers or meat companies, the proposed rule should include the authority to have brokers report the producers or meat companies involved. The regulations should cover/include identification of:

- 1) Meat and meat products – authority and responsibility of the broker to report the originating seller (meat company) of these products.

- 2) Swine over 50 kg – authority and responsibility of the broker to report the originating seller of live market hogs.
- 3) Swine less than 50 kg – authority and responsibility of the broker to report both the origination seller and the receiver of the smaller pigs. Both should be required as both types would be producers subject to assessments when marketed (i.e., U.S. producer who receives feeder pig will market them potentially in many different ways - through packer, dealer, market, or privately).
- 4) Breeding stock – authority and responsibility of the broker to report both the originating seller and receiving producer (logic similar to #3, above).

Customs has no estimates of the number of brokers engaged in pork meat and swine imports or the number of entities (producers or meat companies who are engaged in this activity). Last year 1,070,983,000 pounds of products, 1,888,893 head of slaughter swine over 50 kg, 3,946,097 head of swine under 50 kg, and 98,944 head of breeding stock were imported for \$4.25M of checkoff assessments. It would be expected that this area would be a large source of names of producers and meat companies covered by the Pork Checkoff program that this rule should cover and identify.

OTHER

Record-Keeping. Considerable space is devoted in the published proposed rule addressing record-keeping time and expense. The Board has some knowledge of this area based on many years of experience auditing the records of remitters. The Board has found the record-keeping of these people to vary dramatically. Larger packers and marketing entities have more advanced processes for keeping customer names and the appropriate accounting. However, a vast majority of the entities covered by the proposed rule would not be capable of producing computer generated reports. Even with computers, these smaller entities may not be able to accurately sort (type of livestock, period, etc.). The Board's experience is that many just keep a customer list with no regard to the type of species they market. The Board also finds a lot of hand-kept records from small-volume reporters. USDA's GIPSA may be better suited to provide input about the level of record sophistication of firms they oversee. Producing accurate records may be problematic to a significant number of entities, but the rule should be all-inclusive of entities, no matter what the process, to submit producers covered in the Pork Checkoff program.

Confidentiality. The proposed rule does not address confidentiality of the lists of producers that will be generated. As a part of the rule and for business confidentiality reasons, we believe the names should be kept confidential and not subject to FOIA requests. The exception to this is that the universe of names and addresses should be shared with the National Pork Board and its staff (a government entity controlled by the Secretary) and with state pork

producer associations so they can fulfill their responsibility of communicating program and use of funds to producers [see 1230.58(o)].

Agriculture Census. Every five years the USDA's National Agricultural Statistics Services (NASS) is commissioned to do a thorough census of agricultural producers. This 2002 census was just conducted in the first two months of 2003. As part of the survey, extensive questions are posed on livestock production, sales and expenses. The Board believes that this database should be secured by USDA/AMS as an additional source of names of producers that should be included in the universe of producers.

The Department has a reasonable start to its charge to determine the universe of producers through the remitter process as proposed. However, as these comments point out, remitters are not the only category to be scanned. As the many above examples point out, significant additional processes and associated regulations are needed to identify all producers and importers subject to assessment, not just remitting assessments as called for in the law in the appropriate manner.

Yours truly,

A handwritten signature in black ink, reading "Hugh Dorminy". The signature is fluid and cursive, with the first name "Hugh" and last name "Dorminy" clearly distinguishable.

Hugh Dorminy
President, National Pork Board